IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1489 OF 2002

Shri Pundalik Ishwar Manwadkar)
Aged about 49 years, Occup: Service)
R/o. Daulat Sugar Factory Colony)
At & Post Halkarni, Taluka : Chandgad)
District : Kolhapur).. PETITIONER

VERSUS

1) The Commissioner of Sugar)
State of Maharashtra)
Central Registrar under Multi)
State Co-operative Societies Act)
1984, Pune.)

2) The Chief Factory Inspector)
Commerce Centre, 6/7th Floor)
Tardeo Road, Bombay 400 034.)

3) Daulat Shetkari Sahakari Sakhar)
Karkhana Ltd., Halkarni)
Taluka : Chandgad, Dist.: Kolhapur)
Through its Director)
Shri Gopalrao Motiram Patil)
R/o At & Post Halkarni)
Taluka : Chandgad, Dist.: Kolhapur.).. RESPONDENTS

Mr.V.N.Tayade for the Petitioner.

Mr.S.K.Chincholikar, A.G.P., for Respondent No.1.

Mr.A.Y.Sakhare with Mrs.Varsha Palav for Respondent No.3.

CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.

DATED: 13TH JANUARY 2005

ORAL JUDGMENT : (PER MHATRE, J.)

. The question involved in this Writ Petition is

whether a Labour Officer employed in a Sugar Factory can approach the Commissioner of Sugar and Central Registrar appointed under the Multi State Co-operative Societies Act, 1984 (hereinafter referred to as "the Act") in respect of the termination of his services.

2. The issue in this Petition arises as follows :

. The Petitioner joined service with Respondent No.3 Sugar Factory on 19th September 1977. The factory was subsequently registered as a Co-operative Society under the Act. A charge sheet was issued to the Petitioner by the Sugar Factory on 16th October 2000 alleging that the Petitioner had remained absent from work without sanctioned leave. The other allegation was that the Petitioner had not obeyed the instructions to remain present in Court in respect of a case filed against the Sugar Factory. Insubordination was another charge levelled against the Petitioner. The Petitioner denied these allegations. An inquiry was initiated against the Petitioner which, according to the Petitioner, was conducted in violation of the principles of natural justice. The Inquiry Officer submitted his report finding the Petitioner guilty of the charges levelled against him. The Sugar Factory accepted the report of the Inquiry Officer and removed the Petitioner from service.

3. Aggrieved by this decision of the Sugar Factory, the Petitioner filed a dispute under Section 74 of the Act. An objection was raised by the Sugar Factory before the Commissioner of Sugar and Central Registrar, Respondent No.1 herein, to the effect that the dispute was not maintainable under Section 74 of the Act. The Commissioner of Sugar and Central Registrar accepted the objection of the Sugar Factory and dismissed the application of the Petitioner on 3rd August 2001. Hence, this Writ Petition.

4. Mr.Tayade, learned Counsel for the Petitioner, submits that the Commissioner of Sugar and Central Registrar had jurisdiction to entertain the dispute filed by the Petitioner and rejection of the same was contrary to the provisions of Section 74 of the Act. According to the learned Counsel, the provisions of law with respect to raising of a dispute under the Maharashtra Co-operative Societies Act and the Multi State Co-operative Societies Act are similar and, therefore, a dispute is maintainable under Section 74 of the Act. He buttresses this submission by relying on the judgment of the Division Bench of this Court in the case of *Pralahad s/o. Vithal Rao Pawar* vs. *Managing*

Director, Kannaded Sahakari Sakhar Karkhana Ltd., **1998 II CLR 582**, where the Aurangabad Bench has considered whether officers who are not workmen under the Industrial Disputes Act, 1947 or the Bombay Industrial Relations Act, 1946 could raise a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

5. It would be necessary to consider the provisions of Section 74 of the Multi State Co-operative Societies Act, 1984 which reads as follows :

> "74.(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute (other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of Section 2 of the Industrial Disputes Act, 1947) touching the constitution, management or business of a multi-State co-operative society arises -
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> . (a) among members, past members and persons claiming through members, past members and deceased members, or
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> . (b) between a member, past member or a person claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or
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> . (c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the multi-State co-operative society, or
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> . (d) between the multi-State co-operative

society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society.

such dispute shall be referred to the Central Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute :

. Provided that all disputes in which a national co-operative society is a party shall be referred to the Central Registrar or any officer empowered to exercise the powers of the Central Registrar.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely :

. (a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

. (b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

. (c) any dispute arising in connection with the election of any officer of a multi-State co-operative society.

(3) If any question arises whether a dispute referred to the Central Registrar is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the Central Registrar shall be final and shall not be called in question in any court."

6. A bare perusal of this Section would indicate that if a dispute is raised regarding disciplinary action taken by a Multi-State Co-operative Society against its paid employees, whether or not it is an industrial dispute as defined under clause (k) of Section 2 of the Industrial Disputes Act, 1947, such a dispute is not maintainable before the Commissioner for Sugar and Central Registrar. The bracketed portion of the Section stipulates that such disputes would not be considered as disputes which could be referred to the Commissioner of Sugar and Central Registrar. Section 74(1) postulates that any dispute which touches the constitution, management or business of the Multi-State Co-operative Society could be referred to the Central Registrar for a decision. Sub-section (2) of Section 74 of the Act has clearly defined what are the disputes which touch the constitution, management or business of the Multi-State Co-operative Society. However, the present dispute is not a dispute touching the constitution, management or business of the Multi-State Co-operative Society as stipulated in sub-section (2) of Section 74. In any event a dispute regarding the disciplinary action taken by the Society against its paid employee cannot be referred to the Commissioner of Sugar and Central Registrar. A Labour Officer is a paid employee. However, the disciplinary action taken

against him by a Multi-State Co-operative Society cannot be questioned by referring the dispute to the Commissioner of Sugar and Central Registrar as the jurisdiction to entertain such a dispute is specifically excluded.

7. Section 91 of the Maharashtra Co-operative Societies Act, 1960 which has been considered by the Division Bench of this Court in *Pralahad* (supra) is not *pari materia* with Section 74 of the Act. Therefore, the judgment of the Division Bench in *Pralahad* (supra) has no application to the facts before us.

8. A learned Single Judge of this Court in the case of *Maharashtra State Co-operative Agricultural and Rural Development Bank Ltd., Mumbai and another* vs. *Vasant Mahadeo Gire*, **2005 (1) Mh.L.J. 13**, has considered whether a dispute seeking a declaration that an order of transfer is a nullity and not binding on the disputant could be a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960. The learned Single Judge has held that such a claim is entertainable by a Civil Court under Section 9 of the Civil Procedure Code as well as under Section 91 of the Maharashtra Co-operative Societies Act, 1960. The learned Judge has observed that the relief claimed in that case was ascribable to Section 9 of the Civil Procedure Code and

such a relief could be granted in a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

9. In our view, in the facts of the present case where the Labour Officer who undoubtedly is a paid employee has raised a dispute under Section 74 of the Act, cannot do so as the dispute is in respect of disciplinary action taken by the Sugar Factory which is a Co-operative Society and also does not touch the constitution, management or business of the Co-operative Society. Furthermore, the dispute cannot be considered as a deemed dispute as defined under sub-section (2) of Section 74 of the Act. The impugned order must, therefore, be sustained and the Petition will have to be dismissed.

10. Accordingly, Writ Petition dismissed. The Petitioner, however, may move the appropriate forum for redressal of his grievance regarding his removal from service.

11. Rule discharged. No order as to costs.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)